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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,081

12/21/2005

Martin Schlun

117163.00135

2013

21324 7590 02/17/2009  
HAHN LOESER & PARKS, LLP  
One GOJO Plaza  
Suite 300  
AKRON, OH 44311-1076

EXAMINER

TANNER, JOCELIN C

ART UNIT

PAPER NUMBER

3731

NOTIFICATION DATE

DELIVERY MODE

02/17/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com  
akron-docket@hotmail.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/535,081	<b>Applicant(s)</b> SCHLUN, MARTIN	
	<b>Examiner</b> JOCELIN C. TANNER	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This Office Action is in response to the Amendment filed 30 September 2008. Claims 1-16 are currently pending. The Examiner acknowledges the amendments to claims 1, 5, 10, 11, and 16.

#### ***Claim Rejections - 35 USC § 102***

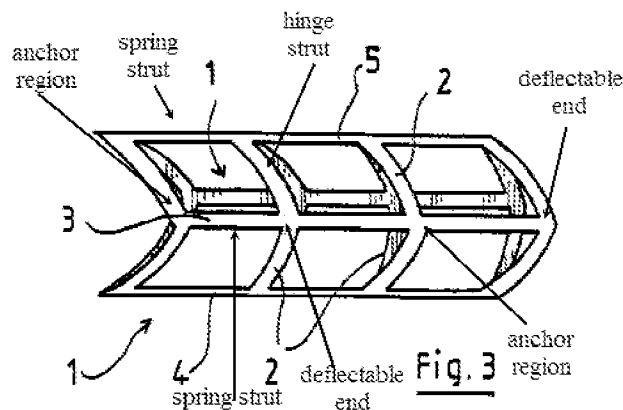
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**2. Claims 1-6, 9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Sgro (US Patent No. 5,496,365).**

3. Regarding claim 1, Sgro discloses at least partially elastically deformable struts forming a bearing structure separated by openings and including spring struts (3) that are elastically resilient with respect to an anchor region on a first end and have a resiliently deflectable second end, a hinge strut that extends transversely with respect to the bearing structure and connects to spring struts at the resiliently deflectable second end, bearing structure having a compressed and extended condition wherein the hinge struts fold over the spring struts while compressed and spring back when expanded (column 1, lines 50-55, Figs. 1-3).



4. Regarding claim **2**, Sgro discloses a spring strut adjoining the ends of a respective hinge strut.
5. Regarding claim **3**, Sgro discloses two spring struts adjoining the ends of a respective hinge strut that are shaped and arranged in a symmetrical relationship.
6. Regarding claim **4**, Sgro discloses a bearing structure that forms a wall of a stent (Fig. 3).
7. Regarding claim **5**, Sgro discloses the stent having a peripheral expansion direction and a reference axis that extends parallel or at an angle to the longitudinal direction while the hinge strut is radially extended (Fig. 3).
8. Regarding claim **6**, Sgro discloses a structure formed of plastic material (column 2, lines 41-43).

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9. Regarding claim **9**, Sgro discloses openings that provide separation of the struts (Fig. 3).

10. Regarding claim **14**, Sgro discloses hinge struts having substantially uniform cross-sections (Fig. 3).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**12. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sgro (US Patent No. 5,496,365) in view of Wu et al. (US Patent No. 6,254,632).**

Regarding claims **7 and 8**, Sgro et al. discloses all of the limitations previously discussed except for the bearing structure being formed of a magnesium alloy or a bioresorbable material.

Wu et al. teach an implantable medical device, i.e. a stent, made of magnesium or combinations thereof or a bioabsorbable polymer (column 4, lines 47-48, and 54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the Sgro et al. device of a magnesium alloy or a bioabsorbable polymer, as taught by Wu et al., since it was well known in the art to have selected the material to construct a stent.

**13. Claims 10, 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sgro (US Patent No. 5,496,365) in view of Ainsworth et al. (US Patent No. 6,626,935).**

14. Regarding claim **10**, Sgro discloses all of the limitations previously discussed except for hinge struts having S-shaped or W-shaped configurations in the compressed condition.

Ainsworth et al. teaches an intravascular stent having springs or "hinge struts" (36) that rotate as flexible joints.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided hinge struts, as taught by Ainsworth et al., to the device of Sgro to allow flexibility and rotation of the stent.

15. Regarding claim **11 and 16**, Sgro discloses end regions having wider sections than adjacent areas to reduce a notch effect (Fig. 11).

**16. Claims 12, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sgro (US Patent No. 5,496,365) in view of Klein et al. (US Patent No. 5,922,020).**

17. Regarding claim **12**, Sgro discloses all of the limitations previously discussed except for spring struts having a larger cross-sectional area than the deflectable ends.

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Klein et al. teaches a stent having “spring struts” joined by hinge regions wherein the spring struts have a larger-cross sectional area than the deflectable ends located at the intersection of the hinge and spring struts (Fig. 17b).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided variation within the cross-sections of the spring and hinge struts, as taught by Klein et al., to provide control of flexibility, expansion and bending strength.

18. Regarding claim **13**, Klein et al. teaches a taper from the anchor region towards the deflectable ends of the spring struts (16B).

19. Regarding claim **15**, Klein et al. teaches a reduced cross-section between a deflectable end of a spring strut and the hinge strut (Fig. 17b).

### ***Response to Arguments***

20. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOCELIN C. TANNER whose telephone number is (571)270-5202. The examiner can normally be reached on Monday through Thursday between 9am and 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jocelin C. Tanner/  
2/06/2009  
Examiner, Art Unit 3731

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734